

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

SHAWN NORMAN RIDDLE,) Case No. CV 17-01950-AS
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 Plaintiff,)
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)
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v.)
)
NANCY A. BERRYHILL, Acting)
Commissioner of Social)
Security,)
)
)
 Defendant.)
)
)

PROCEEDINGS

On March 10, 2017, Plaintiff filed a Complaint seeking review of the denial of his application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 9-10). On August 3, 2017, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 13-14). The parties filed a Joint Submission ("Joint Stip.") on December 6, 2017, setting

1 forth their respective positions regarding Plaintiff's claim. (Docket
2 Entry No. 17).

3
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15.
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7

8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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10 On November 15, 2013, Plaintiff, formerly employed as a service
11 technician for an air conditioning company and a maintenance person for
12 a carpet manufacturer (see AR 60-61, 212-14), filed an application for
13 Disability Insurance Benefits, alleging an inability to work because of
14 a disabling condition since February 29, 2012. (AR 173-74).
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17 On May 12, 2015, the Administrative Law Judge ("ALJ"), Joan Ho,
18 heard testimony from Plaintiff (who was accompanied by a non attorney
19 representative) and vocational expert ("VE") Joseph Torres. (See AR 44-
20 80). On July 29, 2015, the ALJ issued a decision denying Plaintiff's
21 application. (See AR 23-36). After determining that Plaintiff had
22 severe impairments -- "obesity; left tibia/fibular fracture, status-post
23 open reduction internal fixation with hardware removal; history of T12
24 compression fracture; partial thickness tear of the right rotator cuff,
25 status-post arthroscopic repair; and, as of March 2015, status-post
26 acute myocardial infarction with multi-vessel coronary artery disease
27
28

1 status post quadruple coronary artery bypass graft (AR 25-27)¹ -- but
2 did not have an impairment or combination of impairments that met or
3 medically equaled the severity of one of the listed impairments (AR 27-
4 28), the ALJ found that Plaintiff had the the residual functional
5 capacity ("RFC")² to perform light work³ with the following limitations:
6 can lift and carry up to 20 pounds occasionally and 10 pounds
7 frequently; can stand and walk approximately 6 hours during an 8-hour
8 workday; can sit for approximately 6 hours during an 8-hour workday; can
9 occasionally climb ramps and stairs, but can never climb ladders, ropes
10 and scaffolds; can occasionally balance, stoop, kneel, crouch and crawl;
11 can occasionally reach with the right upper extremity, but can never
12 reach overhead with the right upper extremity; must avoid concentrated
13 exposure to extreme cold; and must avoid frequent running and walking on
14 uneven terrain. (AR 28-33).

17
18 Relying on the testimony of the VE, the ALJ then determined that
19 Plaintiff was not able to perform any past relevant work (AR 33-34), but
20 could perform jobs that existed in significant numbers in the national
21 economy. (AR 35-36). Accordingly, the ALJ found that Plaintiff was not
22

23
24 ¹ The ALJ found that Plaintiff's other impairments -- pain in
25 both knees, and adjustment disorder with mixed anxiety and depressed
mood -- were nonsevere. (AR 25-27).

26 ² A Residual Functional Capacity is what a claimant can still do
27 despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

28 ³ "Light work involves lifting no more than 20 pounds at a time
with frequent lifting or carrying of objects weighing up to 10 pounds."
20 C.F.R. § 404.1567(b).

1 disabled within the meaning of the Social Security Act. (AR 34-36).
2

3 Plaintiff requested that the Appeals Council review the ALJ's
4 decision. (See AR 19). When the request was denied on December 9,
5 2015, (see AR 1-5), the ALJ's decision then became the final decision of
6 the Commissioner, allowing this Court to review the decision. See 42
7 U.S.C. §§ 405(g), 1383(c).
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9

10 **STANDARD OF REVIEW**

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12 This Court reviews the Administration's decision to determine if
13 it is free of legal error and supported by substantial evidence. See
14 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
15 evidence" is more than a mere scintilla, but less than a preponderance.
16 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
17 whether substantial evidence supports a finding, "a court must consider
18 the record as a whole, weighing both evidence that supports and evidence
19 that detracts from the [Commissioner's] conclusion." Aukland v.
20 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
21 omitted). As a result, "[i]f the evidence can support either affirming
22 or reversing the ALJ's conclusion, [a court] may not substitute [its]
23 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
24 880, 882 (9th Cir. 2006).

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PLAINTIFF'S CONTENTION

Plaintiff alleges that the ALJ failed to properly assess Plaintiff's credibility. (See Joint Stip. at 4-13, 17).

DISCUSSION

Plaintiff asserts that the ALJ did not provide clear and convincing reasons for finding that Plaintiff's testimony about his symptoms was not credible. (See Joint Stip. at 4-13, 17). Defendant asserts that the ALJ provided good reasons for finding Plaintiff not fully credible. (See Joint Stip. at 13-16). After consideration of the record as a whole, the Court finds that Plaintiff's claim of error warrants a remand for further consideration.

1. Legal Standard

Where, as here, the ALJ finds that a claimant suffers from a medically determinable impairment that could reasonably be expected to produce his alleged symptoms, the ALJ must evaluate "the intensity, persistence, and functionally limiting effects of the individual's symptoms . . . to determine the extent to which the symptoms affect the individual's ability to do basic work activities. This requires the [ALJ] to make a finding about the credibility of the individual's statements about the symptom(s) and its functional effect." Soc. Sec. Ruling 96-7p.

A claimant initially must produce objective medical evidence establishing a medical impairment reasonably likely to be the cause of

1 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
2 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
3 claimant produces objective medical evidence of an underlying impairment
4 that could reasonably be expected to produce the pain or other symptoms
5 alleged, and there is no evidence of malingering, the ALJ may reject the
6 claimant's testimony regarding the severity of his or her pain and
7 symptoms only by articulating specific, clear and convincing reasons for
8 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.
9 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
10 2007)); see also Smolen, supra; Reddick v. Chater, 157 F.3d 715, 722
11 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th
12 Cir. 1997). Because the ALJ does not cite to any evidence in the record
13 of malingering, the "clear and convincing" standard stated above
14 applies.

15

16 Generalized, conclusory findings do not suffice. See Moisa v.
17 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (the ALJ's credibility
18 findings "must be sufficiently specific to allow a reviewing court to
19 conclude the [ALJ] rejected [the] claimant's testimony on permissible
20 grounds and did not arbitrarily discredit the claimant's testimony")
21 (citation and internal quotation marks omitted); Holohan, 246 F.3d at
22 1208 (the ALJ must "specifically identify the testimony [the ALJ] finds
23 not to be credible and must explain what evidence undermines the
24 testimony"); Smolen, 80 F.3d at 1284 ("The ALJ must state specifically
25 which symptom testimony is not credible and what facts in the record
26 lead to that conclusion."); see also SSR 96-7p.

27 2. The ALJ's Credibility Finding

28

1 Plaintiff made the following statements in a "Function Report -
2 Adult" dated December 15, 2013 (see AR 228-36):
3

4 He lives with family in a prefabricated place. He
5 provides financial support for his family. He takes care
6 of pets by loving them (his wife feeds the pets). With
7 respect to his daily activities, he does physical therapy and
medications. (See AR 228-29, 235).

8 For his impairments he takes Hydrocod/Norco (which
9 causes him to be tired and angry), Ambien (which causes him
10 to be tired and to have memory loss), Ativan (which causes
him to be tired and to have memory loss), and Ibuprofen
11 (which causes him to have an upset stomach and constipation).
(See AR 235).

12 His impairments affect his walking, standing, bending
over, lifting, climbing, stair climbing, squatting and
carrying step ladders, and therefore limit his ability to
work. His impairments affect his sleep (his pain keeps him
awake). His impairments affect his abilities to dress (he
has pain), bathe (he has pain), use the toilet (he has pain
and cannot twist), and have sex. He does not need special
reminders to take care of personal needs and grooming, and he
does not need reminders to take medicine. (See AR 228-30,
235).

19 He prepares his own meals (once or twice a week), but
20 his wife does most of the cooking. His impairments have not
21 changed his cooking habits. His houseould chores are
household repairs. He needs his son to help him with lifting
22 and doing physically demanding chores. He cannot do
housework or yardwork because he cannot lift or push or pull
heavy items. His wife feeds their son, does the laundry, and
cleans the house. He goes outside alone, driving the car,
23 daily. He shops in stores for food and personal hygiene
items, two times a month (1 hour or more). He is able to pay
bills, count change, handle a savings account, and use a
checkbook/money orders. His impairments have not changed his
ability to handle money. (See AR 229-32).

27 His hobbies and interests are exercising, hiking, riding
quads, taking long walks, and holding and playing with his
28 grandson. He does limited exercise and cannot do these
activities because of pain in his back, leg, arm and knee.

1 He socializes with others as often as he can. He regularly
2 goes to doctors' appointments and physical therapy, but he
3 needs to be reminded to go places. He sometimes needs
4 someone to accompany him out, depending on the activity
5 (i.e., loading of heavy items). He has problems getting
along with others because his medication and pain make him
irritable. Since his accident he no longer goes camping or
rides ATVs. (See AR 232-33).

6 His impairments affect his lifting, squatting, bending,
7 standing, reaching, walking, sitting, kneeling, stair-
climbing, memory (the medication), concentration, and
getting along with others. He does not know how far he can
walk before needing to rest; he uses a cane if he needs to
walk far. He does not know for how long he can pay attention
(he is always in pain). He finishes what he starts and can
follow written and spoken instructions pretty well. He does
not know how well he gets along with authority figures. He
has never been fired or laid off from a job because of
problems getting along with other people. With respect to
handling stress, he takes anti-anxiety medication since the
accident (he does not have work, his family does not have
medical insurance, and he has limited funds). He has fears
of not working and of being poor. In March 2012, he was
prescribed a wheelchair, walker, crutches, back brace, and a
cane, and he uses a cane for long walks. (See AR 233-35).

17 Plaintiff gave the following testimony at the May 12, 2015
18 administrative hearing (see AR 47-66):

20 He is married, and lives with his wife in a mobile home.
21 He is 44 years old, 5'9" tall, and weighs 180 pounds. He is
right-handed. He has a driver's license. Prior to March 8,
2015 (when he had a heart attack), he drove on a limited
basis, to doctors' appointments and for prescriptions. His
back hurt when he drove long distances (for about 30
minutes). He has not driven since his heart attack -- the
doctors restricted his driving after his surgery, the
medication makes him dizzy, and he is concerned about injury
if an air bag deploys. He was no longer able to work as of
February 29, 2012 (when he had a work accident, falling from
the roof 15 feet, and sustaining numerous injuries -- a left
ankle open tibia fracture, three compression fractures in the
back, three bulging discs, a right rotator cuff tear, both
knees [the right knee gives out when he bends down, a MRI

1 shows a baker's cyst behind his right kneecap]), and he has
2 not worked since then. He had shoulder surgery (torn
3 rotator) in April 2014. He walked into the hearing using a
4 cane, and he has used a cane mostly outside the house every
5 day since February 29, 2012. As a result of the accident, he
6 suffers from depression and anxiety, which causes him to have
7 daily panic attacks that would present a problem for him
8 returning to the work setting. (See AR 45, 48-51, 53, 55,
9 57-59, 61-62).

10 He has limitations in sitting, standing, walking and
11 lifting because of his back and his knees and ankle. (He did
12 not know if Dr. Allison, the doctor who had reconstructed his
13 ankle, had put any physical restrictions on him. His ankle
14 has lost range of motion in his ankle.) He has limitations
15 in reaching because of his back, left arm, and left shoulder.
16 He can sit for 30 minutes before feeling discomfort. After
17 sitting for 30 minutes, he has to get up (it takes about 15
18 minutes to relieve the back pain). He can stand in one spot
19 for about 15 to 20 minutes before feeling discomfort.
20 Although he is not supposed to lift any weight, he estimates
21 he is able to lift 10 pounds. (See AR 51-53, 55-56, 62).

22 He is not able to do daily chores (cooking, cleaning)
23 because of his impairments. On a typical day, he wakes up,
24 takes a pain pill, eats breakfast, mostly stays at home until
25 he takes a walk around the neighborhood for about 20 minutes
26 (which causes pain in his left ankle, back and shoulder, but
27 he does it based on the doctor's instruction that it is good
28 for his heart). (See AR 59-60).

29 Most of the day, when he is not walking, he sits on the
30 couch and puts his legs up to relieve the pain. Pain
31 medications are helpful, but there are side effects, such as
32 memory loss, tiredness, and dizzines. To counter the side
33 effects he usually takes one nap a day for about an hour and
34 a half. (See AR 53-55).

35 He tries to avoid his panic attacks. He has seen a
36 psychiatrist (Dr. Guntupalli) for his depression and anxiety
37 every 90 days. Since 2012 he saw a therapist (Mike O' Cleary)
38 for his depression and anxiety once a week for a year, but
39 his insurance changed. The therapy and medications helped
40 him cope with the symptoms. Although his ankle and back have
41 healed, he is still having problems with them. He recently
42 received an injection for his ankle. (Dr. Allison has not

1 recommended an ankle replacement). For his back, a nerve
2 block in May has been scheduled, and acupuncture has been
3 recommended. He is not getting any treatment for his right
knee. (See AR 57-58, 62-65).

4 He is not able to work in a desk job or a bench job,
5 with no real skills required, because he cannot sit for
longer than 20 to 30 minutes, he has a bad memory, he has
6 trouble concentrating, he has restrictions on lifting,
reaching, sitting and concentrating, and his medication makes
7 him tired.

8 (See AR 61).

9 After summarizing Plaintiff's testimony (see AR 29), the ALJ
10 determined that Plaintiff's "medically determinable impairments could
11 reasonably be expected to cause the alleged symptoms; however, the
12 [plaintiff's] statements concerning the intensity, persistence and
13 limiting effects of these symptoms are not entirely credible for the
14 reasons explained in this decision." Id.

15
16 The ALJ found that Plaintiff's functional limitations were
17 sufficiently accommodated by the RFC determination. (AR 29-30). In
18 making this finding, the ALJ considered the opinions provided by two
19 state agency medical consultants, a consultative medical examiner,
20 Plaintiff's treatment physician, two state agency psychological
21 consultants, a consultative psychiatric examiner, and workers'
22 compensation doctors. See AR 30-32. The ALJ also based this finding
23 on his assessment of Plaintiff's credibility, stating, "[i]n making this
24 finding [about Plaintiff's RFC], the undersigned must also address the
25 credibility of the claimant as it relates to statements made regarding
26 the extent and severity of the claimant's impairments and the
27 limitations they cause." AR 32.

1 After reviewing Plaintiff's treatment history, work history and
2 activities of daily living, and considering the statements in the third
3 party function report prepared by Plaintiff's wife, the ALJ concluded
4 that plaintiff's "statements about the severity and limiting effects of
5 his impairments cannot be given full weight as the factors that affect
6 his credibility outweigh the factors that bolster his credibility." AR
7 33.

8 a. Treatment History

9
10 The ALJ discounted Plaintiff's credibility based on Plaintiff's
11 treatment history, finding that Plaintiff's ankle surgery was successful
12 and that even after a second surgery to remove the hardware, the ankle
13 was reported to be stable, there was "no evidence joint degeneration in
14 spite of the greater likelihood of degeneration following this type of
15 injury," (AR 32), and that Plaintiff's limited range of motion in his
16 ankle was taken into account by the RFC limitations. Id.

17
18 With respect to Plaintiff's injury to his thoracolumbar spine, the
19 ALJ noted that the spine was "structurally stable and as such, the
20 objective medical evidence of record does not support [Plaintiff's]
21 allegations of debilitating pain symptoms from his low back." (AR 32).

22
23 The ALJ noted that Plaintiff's complaints of shoulder pain predated
24 his fall in February 2012, Plaintiff had received conservative treatment
25 for the partial tear of the rotator cuff prior to having arthroscopic
26 surgery to repair the tear in 2014, and that Plaintiff's continued
27 symptoms of pain and loss of range of motion were taken into account in
28 the RFC limitations.

1 The ALJ found that the records of treatment for Plaintiff's other
2 impairments and his recent heart attack did not affect his ability to
3 work within the RFC limitations and discounted Plaintiff's allegations
4 regarding the functional limitations imposed by his depression and knee
5 impairments. (AR 32).

6

7 b. Work History

8

9 The ALJ found that Plaintiff's credibility was bolstered by his
10 work history, noting that Plaintiff's long and continuous history of
11 work at substantial gainful activity levels going back more than fifteen
12 years, his lack of earnings since the alleged onset date, "generally
13 supports his allegations that he is not able to work following his
14 traumatic fall on February 29, 2012." (AR 33).

15

16 c. Activities of Daily Living

17

18 The ALJ found that Plaintiff's ability to drive and go out alone
19 and continue to socialize was inconsistent with the statement made in
20 his function report, that he has difficulty walking, standing, bending
21 over, lifting, climbing stairs, squatting, and carrying object and was
22 therefore not able to perform most household chores. (AR 33). The ALJ
23 also discounted Plaintiff's allegations of problems with concentration
24 and attention, noting that Plaintiff admitted that he was able to finish
25 activities without difficulty, follow both written and spoken
26 instructions well, handle his family's finances, and drive, "which are
27 all activities that require good attention and concentration." Id. The
28 ALJ also found that Plaintiff's testimony about limited activities was

1 contrary to the statements in his function report and the medical
2 records which note stability and minimal worsening of Plaintiff's
3 impairments. Id.

4

5 3. The ALJ Did Not Properly Assess Plaintiff's Credibility

6

7 As set forth below, the ALJ failed to provide clear and convincing
8 reasons for finding that Plaintiff's testimony about the intensity,
9 persistence and limiting effects of his pain and symptoms was not
10 entirely credible.⁴

11

12 First, the ALJ failed to "specifically identify 'what testimony is
13 not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen, 80 F.3d at 1284 ("The ALJ must state specifically what symptom testimony is not credible and what facts in the record lead to that conclusion").

18

19 Second, the ALJ's partial discrediting of Plaintiff's testimony
20 about his symptoms and functional limitations based on his ability to
21 perform certain daily activities, such as driving, going out alone, and
22 socializing, was not a clear and convincing reason. See Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) ("[T]he mere fact that a

24

25 ⁴ The Court will not consider reasons for finding Plaintiff not
26 entirely credible (see Joint Stip. at 15-16) that were not given by the
27 ALJ in the decision. See Connell v. Barnhart, 340 F.3d 871, 874 (9th
28 Cir. 2003) ("We are constrained to review the reasons the ALJ asserts.");
citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947), Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001)); and Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) ("We review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not rely.").

1 plaintiff has carried on certain daily activities . . . does not in any
2 way detract from her credibility as to her overall disability. One does
3 not need to be 'utterly incapacitated' in order to be disabled.");
4 Reddick, supra ("Only if the level of activity were inconsistent with
5 the Claimant's claimed limitations would these activities have any
6 bearing on Claimant's credibility."). While a plaintiff's ability to
7 spend a "substantial part" of his day engaged in pursuits involving the
8 performance of physical functions that are transferable to a work
9 setting may be sufficient to discredit him, here, there is no evidence
10 that Plaintiff was spending a substantial part of his day engaged in
11 these activities or that the physical demands of such tasks as driving,
12 going out alone and socializing when able to do so, were transferable
13 to a work setting. See Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d
14 595, 600 (9th Cir. 1999). Indeed, at the time of the hearing, Plaintiff
15 testified he was not able to do daily chores (cooking, cleaning) because
16 of his impairments and mostly stays at home and puts his legs up to
17 relieve the pain. (AR 59-60). Thus, Plaintiff's admitted daily activity
18 does not constitute a legally sufficient reason to reject Plaintiff's
19 credibility.

20
21 It is not clear whether the ALJ considered Plaintiff's testimony
22 about his limited abilities to perform such daily activities (see AR 45,
23 48-49 [Plaintiff testified that before his heart attack on March 8, 2015
24 he drove on a limited basis to doctors' appointments and to obtain
25 prescriptions], 51 [Plaintiff testified that his back would hurt if he
26 drove long distances, which was for about 30 minutes], 231 [Plaintiff
27 testified that he shopped in stores for food and personal hygiene items
28 on a biweekly basis for only an "hour or more"], 232 [Plaintiff

1 testified that he sometimes needed someone to accompany him when he went
2 out, particularly if it required the loading of items], and 232
3 [Plaintiff testified that he socializes with others "[a]s often as [he]
4 can"]. Therefore, the degree to which Plaintiff could perform such
5 daily activities may not have been inconsistent with his testimony
6 regarding his symptoms and limitations. See Reddick, supra; see also
7 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 600 (9th
8 Cir. 1999) ("If a claimant is able to spend a substantial part of his day
9 engaged in pursuits involving the performance of physical functions that
10 are transferable to a work setting, a specific finding as to this fact
11 may be sufficient to discredit a claimant's allegations.").

12

13 Third, to the extent that the ALJ partially discredited Plaintiff's
14 testimony based on inconsistencies in Plaintiff's testimony and on
15 inconsistencies between Plaintiff's testimony and notations in the
16 medical record, see Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir. 2005)
17 ("In determining credibility, an ALJ may engage in ordinary techniques
18 of credibility evaluation, such as considering claimant's reputation for
19 truthfulness and inconsistencies in claimant's testimony."); Light v.
20 Social Security Admin., supra ("In weighing a claimant's credibility,
21 the ALJ may consider his reputation for truthfulness, inconsistencies
22 either in his testimony or between his testimony and his conduct, his
23 daily activities, his work history, and testimony from physicians and
24 third parties concerning the nature, severity, and effect on the
25 symptoms of which he complains."), such reason was not clear and
26 convincing. For example, the ALJ failed to state how Plaintiff's
27 testimony about his difficulties with concentration and attention --
28 (see AR 233 [in the Function Report, Plaintiff testified that his

1 impairments affected his ability to concentrate and that he did not know
2 for how he could pay attention because he was always in pain], AR 61 [at
3 the hearing, Plaintiff testified he is unable to do basic work full-time
4 because of trouble concentrating]) -- was inconsistent with Plaintiff's
5 testimony about his abilities to finish activities without difficulty,
6 follow written and spoken instructions well, handle his family's
7 activities, and drive (see AR 231, 233 [in the Function Report,
8 Plaintiff testified that he drove a car, that he was able to pay bills,
9 count change, handle a savings account, and use a checkbook/money
10 orders, and that he finished what he started (using a conversation,
11 chores, reading, and watching a movie as examples), AR 48-49, 51 [at the
12 hearing, Plaintiff testified that he does limited driving, and that his
13 back begins to hurt after about 30 minutes of driving]). Moreover, the
14 ALJ failed to specify how Plaintiff's testimony "about limited
15 activities" contradicted Plaintiff's testimony in the Function Report
16 and "the notations in the file of stability and minimal worsening of his
17 impairments following the various surgical interventions."

18

19 Fourth, the ALJ's determination that Plaintiff's credibility was
20 diminished because of his treatment history was essentially a finding
21 that Plaintiff's testimony about symptoms and functional limitations
22 were not supported by the objective medical evidence of record.
23 However, once a claimant demonstrates medical evidence of an underlying
24 impairment, "an ALJ 'may not disregard [a claimant's testimony] solely
25 because it is not substantiated affirmatively by objective medical
26 evidence.'" Trevizo v. Berryhill, 862 F.3d 987, 1001 (9th Cir.
27 2017)(quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir.
28 2006)).

1
2 The Court finds that the ALJ's stated reasons for discounting
3 Plaintiff's credibility were not sufficiently specific, or clear and
4 convincing to allow the Court to conclude that the ALJ discounted
5 Plaintiff's credibility on legally permissible grounds, and therefore,
6 the Court is therefore unable to defer to the ALJ's credibility
7 determination. Cf. Flaten v. Sec'y of Health & Human Servs., 44 F.3d
8 1453, 1464 (court will defer to the ALJ's credibility determinations
9 when they are appropriately supported in the record by specific findings
10 justifying that decision) (citations omitted).

11
12 4. Remand Is Warranted

13
14 The decision whether to remand for further proceedings or order an
15 immediate award of benefits is within the district court's discretion.
16 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
17 useful purpose would be served by further administrative proceedings,
18 or where the record has been fully developed, it is appropriate to
19 exercise this discretion to direct an immediate award of benefits. Id.
20 at 1179 ("[T]he decision of whether to remand for further proceedings
21 turns upon the likely utility of such proceedings."). However, where,
22 as here, the circumstances of the case suggest that further
23 administrative review could remedy the Commissioner's errors, remand is
24 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
25 Harman v. Apfel, supra, 211 F.3d at 1179-81.

26
27 Since the ALJ failed to properly assess Plaintiff's credibility,
28 remand is appropriate. Because outstanding issues must be resolved

1 before a determination of disability can be made, and "when the record
2 as a whole creates serious doubt as to whether the [Plaintiff] is, in
3 fact, disabled within the meaning of the Social Security Act," further
4 administrative proceedings would serve a useful purpose and remedy
5 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.
6 2014)(citations omitted).

ORDER

10 For the foregoing reasons, the decision of the Commissioner is
11 reversed, and the matter is remanded for further proceedings pursuant
12 to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: January 5, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE